

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Service Quality, Customer	)	WC Docket No. 08-190
Satisfaction, Infrastructure and	)	
Operating Data Gathering	)	

TO: The Commission

**REPLY COMMENTS OF THE RURAL VERMONT ITCs**

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## SUMMARY

Franklin Telephone Company, Ludlow Telephone Company, Northfield Telephone Company, Perkinsville Telephone Company, Shoreham Telephone Company, Inc., Topsham Telephone Company and Waitsfield-Fayston Telephone Company, Inc. (collectively, the Rural Vermont ITCs), by their attorney, hereby submit these reply comments in response the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (Order/NPRM), in the captioned proceeding.

The Commission proposes to extend ARMIS-type reports to all carriers, including small incumbent local exchange carriers (ILECs) such as the Rural Vermont ITCs. The NPRM does not explain why the FCC needs more data. Some of the commenting parties attempted to suggest uses for the data, but none has justified the enormous burden of collecting the data at the federal level from such a broad range of carriers. The Rural Vermont ITCs reiterate their request for the Commission to terminate the proceeding, or to grant an exemption for small ILECs and their affiliates, as discussed further below. Without such action, the rules would violate the Paperwork Reduction Act, a 2001 warning from the Office of Management and Budget (OMB), the Regulatory Flexibility Act, and the Small Business Paperwork Relief Act of 2002.

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#### **BACKGROUND**

The Rural Vermont ITCs are small ILECs serving rural areas of Vermont. In addition to providing local exchange service, some of the Rural Vermont ITCs have affiliates that provide broadband service, long distance service, and in some instances,

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<sup>2</sup> Reply Comments of the Rural Vermont ITCs on the Initial Regulatory Flexibility Analysis, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008); Reply Comments of the Rural Vermont ITCs on the Information Collections, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008).

cable TV service.

Several of them serve fewer than 2000 lines. They all have fewer than 1500 employees (the size threshold for small businesses under the Regulatory Flexibility Act).<sup>3</sup> Some of the Rural Vermont ITCs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).<sup>4</sup>

Their affiliates are of similar size, or smaller. All of the Rural Vermont ITCs and their staff have fewer than 100 employees. Indeed, the LECs typically share staff with their affiliates.

Given their small size and correspondingly small staff, the Rural Vermont ITCs and their affiliates would be especially impacted by the burdens of complying with any new federal reporting requirements.

#### **I. THERE IS NO NEED FOR THE PROPOSED FEDERAL REPORTING REQUIREMENT**

In their Comments, the Rural Vermont ITCs pointed out that before releasing the NPRM, the Commission should have determined why it needs to collect more data. But the Commission did not do

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<sup>3</sup> NPRM app. C para. 5.

<sup>4</sup> Id. para. 44.

so.<sup>5</sup> Other commenters pointed out this deficiency as well.<sup>6</sup> The Wireless Communications Association International (WCAI) even called the ARMIS Reports "a solution in search of a problem."<sup>7</sup> Indeed, most of the commenters opposed the imposition of ARMIS reports.<sup>8</sup>

Only a handful of commenters attempted to find reasons for the Commission to collect data. But these commenters fell short of the showings needed to justify the substantial regulatory burden, as shown below.

**A. FEDERAL DATA COLLECTIONS SHOULD NOT SUBSTITUTE FOR STATE-LEVEL REPORTING REQUIREMENTS**

Several parties that attempted to define a need for federal data collection failed to heed the Commission's warning about the types of reasons that would be unacceptable. In the Order, the Commission warned parties against trying to justify federal reporting requirements via purely state needs. The Commission

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<sup>5</sup> Rural Vermont ITCs Comments at 4.

<sup>6</sup> E.g., Verizon and Verizon Wireless Comments at 2 (there is no need for ARMIS data); AT&T Comments at 3 (FCC must identify a specific need for the data); Sprint Nextel Comments at 4.

<sup>7</sup> WCAI Comments at 1.

<sup>8</sup> E.g., Verizon and Verizon Wireless Comments at 12; National Cable & Telecommunications Association (NCTA) Comments at 2; Sprint Nextel Comments at 3; WCAI Comments at 4 ("Commission should terminate the proceeding").

held that states do not need federal reports so that states can ensure just and reasonable rates, or so that states can rely on the federal reports for state consumer protection activities.<sup>9</sup>

[T]he Commission '[does] not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.' Any interest by state commissions or other groups in comparing intrastate service quality between states, or within a state between carriers, does not create a federal need, and nothing we do today prevents state commissions from exercising their state authority to seek any relevant information, or from standardizing their data collections with each other.<sup>10</sup>

In sum, there must be a federal need shown for the proposed federal reporting requirements.

**B. ONLY THREE STATES ATTEMPTED TO FIND REASONS FOR COLLECTING MORE DATA**

With this warning as a background, 47 states did not participate in this proceeding. It appears that those states do not envision a federal need to collect more data at the federal level.

Only three states proffered reasons for the FCC to collect data. Those states are: Michigan, Texas and California. Their

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<sup>9</sup> Order paras. 9, 14.

<sup>10</sup> Order para. 10.



reasons fall short of what is required by the Commission, the Regulatory Flexibility Act and the Paperwork Reduction Act.

## **1. MICHIGAN**

The Michigan Public Service Commission (MPSC) asserts that it needs federal reports to ensure that the data it collects at the state level is reasonable.<sup>11</sup> The MPSC's proposal would result in thousands of carriers across the country submitting large volumes of data, solely to make the MPSC feel more confident about the data collected at the state level. This is clearly inconsistent with the Commission's warning about trying to use state needs to justify federal data collection.

The MPSC also asserts that it has relied on ARMIS data "in many contested cases and other proceedings."<sup>12</sup> Surely, the implicit possibility of such a future use of ARMIS-type data does not outweigh the substantial burdens of collecting that data.

The states have other ways to obtain data. They could work together to share data collected from carriers at the state level. They could obtain data from third parties, as suggested by CTIA and the Competitive Enterprise Institute (CEI) in their

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<sup>11</sup> MPSC Comments at 3.

<sup>12</sup> Id. at 3.

comments.<sup>13</sup>

In sum, the MPSC did not provide a valid need for collecting data at the federal level.

## **2. TEXAS**

The Texas Office of Public Utility Counsel (TxOPC) does no better. The TxOPC wants data to be collected at the federal level from all carriers so that the Public Utility Commission of Texas (PUCT) can "compare the level of telecommunications service quality delivered in Texas to that of other states."<sup>14</sup> But that's exactly the crux of the FCC's warning. The FCC said it will not collect data at the federal level just so states can compare service quality between states.

In sum, like the MPSC, the TxOPC fails to present a valid need for collecting data at the federal level.

## **3. CALIFORNIA**

The California Public Utilities Commission (CPUC) apparently tried to find federal needs for ARMIS-type data. The CPUC proposed uses that track the broad, ambiguous uses mentioned by the FCC, such as policy-making, service quality, public safety,

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<sup>13</sup> CTIA Comments at 3; CEI Comments at 2-3; see also Qwest Comments at 3.

<sup>14</sup> TxOPC Comments at 3.

broadband deployment and analyzing market competition.<sup>15</sup> The CPUC does not explain why the existing FCC data collections are insufficient for these purposes, and why data must be collected at the federal level, rather than by the states. Moreover, the CPUC admits that its own "Consumer Protection Initiative" provides data to consumers, but the CPU doesn't explain why that data is not sufficient.<sup>16</sup>

Without first determining the specific data that allegedly is needed at the federal level, the CPUC suggests that portions of ARMIS Reports 43-05, 43-06, 43-07 and 43-08 should be collected. But, as shown by Verizon, the ARMIS data is useless to consumers and useless for broadband and public safety policy making. For example, Verizon shows that much of the data is available via other sources, and some of the data doesn't make sense in today's network environment.<sup>17</sup>

In short, the CPUC's effort to create federal needs for collecting ARMIS data does no better than the Commission in the NPRM itself.

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<sup>15</sup> CPUC Comments at 3-6.

<sup>16</sup> Id. at 6.

<sup>17</sup> Verizon and Verizon Wireless Comments att. A; see also Qwest Comments at 2-5 (questioning the usefulness of ARMIS-type data).

## II. THE BURDENS OF COMPLIANCE WERE NOT CONSIDERED BY THE COMMENTERS THAT FAVOR EXPANDED REPORTING REQUIREMENTS

The burdens of compliance with the proposed reporting requirements are clear to the commenters that opposed the reports. For example, the Rural Vermont ITCs estimated that the cost of compliance for a small LEC could range from tens of thousands of dollars to hundreds of thousands of dollars for each rural LEC. The Commission estimates the staff hours involved in producing the current ARMIS Reports at issue to be about 1500 hours per year per company.<sup>18</sup> Verizon estimates the burden to be much greater. To produce the ARMIS infrastructure and service quality reports, Verizon dedicates the equivalent of six full-time employees to generating the reports and involves hundreds of other employees.<sup>19</sup> Multiply these estimates by the thousands of ILECs, wireless companies, etc. that could become subject to the

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<sup>18</sup> Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 43,933 (FCC July 29, 2008) (319 hours for each of ARMIS Reports 43-05 and 43-07); Public Information Collection(s) Approved by Office of Management and Budget, 71 Fed. Reg. 29,961 (FCC May 16, 2006) (720 hours for ARMIS Report 43-06); Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 72 Fed. Reg. 5715 (FCC Feb. 7, 2007) (139 hours for ARMIS Report 43-08).

<sup>19</sup> Verizon and Verizon Wireless Comments at 9; see also Sprint Nextel Comments at 5 (companies that currently don't file ARMIS reports will have a high initial cost for preparing the reports); Hughes Network Systems, LLC Comments at 3 (heavy burden that is not offset by any insights gained from the additional data); NCTA Comments at 4 (substantial costs of compliance).

expanded reporting requirements, and the burden can readily be hundreds of millions of dollars.

The CPUC, MPSC and TxOPC did not even attempt to address the burden of compliance.

The other commenter that endorsed expanded reporting requirements was Free Press. But Free Press asserts that "modernizing the reporting system to collect broadband infrastructure and service quality data would not create an additional regulatory burden."<sup>20</sup> Free Press obviously did not consider the fact that thousands of carriers that currently do not submit ARMIS data (such as wireless carriers and small LECs) could be required to start generating such data.

To pass muster under the Regulatory Flexibility Act and the Paperwork Reduction Act, the FCC must show a "significant benefit" that justifies the burden. When such benefit was not shown in 2001 for expanding a limited amount of reports to a well-defined group of carriers, the OMB did not approve the proposed reporting requirement.<sup>21</sup> The same situation is present here, but exponentially worse. The proposed reporting requirements are much broader in scope, and could be applied to tens of thousands of companies without any clear benefits. As

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<sup>20</sup> Free Press Comments at 8.

<sup>21</sup> Letter from Edward Springer, OMB, to Judy Boley, FCC, CC Docket No. 00-229 (Jan. 29, 2001).

such, the proposed reports would violate the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act of 2002.

**III. THE COMMISSION SHOULD TERMINATE THE PROCEEDING OR EXEMPT SMALL ILECS AND THEIR AFFILIATES**

Many commenters echoed the request of the Rural Vermont ITCs for the Commission to terminate the proceeding.<sup>22</sup> And several commenters offered the alternative of exempting their industry - such as the wireless carriers and the satellite providers.<sup>23</sup>

But it was only the parties representing small ILECs that specifically based their requested exemption on the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act of 2002. The Rural Vermont ITCs and the Rural Nebraska LECs requested an exemption for small ILECs. OPASTCO/MTA requested an exemption for rural ILECs and rural ILEC broadband providers. As shown in the parties' comments, small ILECs meet the employee threshold for the Regulatory Flexibility Act, and many meet the threshold for the Small Business Paperwork Relief Act of 2002.

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<sup>22</sup> E.g., WCAI Comments at 4 ("Commission should terminate the proceeding").

<sup>23</sup> Verizon and Verizon Wireless Comments at 7 (unnecessary to extend reporting requirements to the wireless industry); Satellite Industry Association Comments at 3.

The Rural Vermont ITCs want to clarify that their requested exemption should apply to their ILEC companies as well as the affiliates of those companies. The Commission stated that the proposed reporting requirements may apply to facilities-based broadband providers and telecommunications carriers. Small ILECs often have affiliates that provide interexchange service, broadband service or CATV service. These affiliates may or may not be facilities-based. And depending on which carriers would be subject to the reporting requirements adopted in this proceeding, the small ILEC and/or its affiliates may be subject to the reporting requirements.

The reasons provided by the commenters for exempting small ILECs from any reporting requirements would apply also to their affiliates. The affiliates are smaller than the ILECs themselves. They typically have fewer employees, or share some of the employees with the ILEC. So if an exemption were granted to small ILECs based on their size pursuant to the Regulatory Flexibility Act, Paperwork Reduction Act and Small Business Paperwork Relief Act of 2002, that same reasoning would compel an exemption for their affiliates.

For these reasons, the Rural Vermont ITCs submit that, if the Commission does not terminate the proceeding, then the Commission should grant an exemption to all "small ILECs and their affiliates."

## CONCLUSION

As shown above, the Commission and commenters have not shown why the Commission needs to collect more data at the federal level. Moreover, the Commission and commenters failed to heed the OMB's warning about imposing ARMIS-type reporting burdens without clear benefits. To resolve this situation, the Commission could terminate this proceeding, or exempt small ILECs and their affiliates from any reporting requirements adopted in this proceeding.

Respectfully submitted,  
**RURAL VERMONT ITCs**

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**CERTIFICATE OF SERVICE**

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 15th day of December, 2008, I have sent a copy of the foregoing to the following:

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